19 49. K File No. O. Entertainments/49

Legal DEPARTMENT

A BRANCH

Std. Sectt. Slip 876

---

Subject:—Opinions under the Bombay Entertainments Act, 1923.

File No. O. Entertainments/49.

Std. Sectt. Slip 24 B c.

666-A

Office of the R.I.A.

Entertainment tax levied in Rajpipla

Bombay Entertainments Duty Act, 1923.

The levy of tax beforethe Act was brought into operation is clearly illegal and a claim for the r efund fo the amount can be made by the tax payer and a civil court will have jurisdiction to entertain a suit for refund. The view taken by Under Secretary, Finance Department in para 2 of his note dated the 28th June 1949 is correct.

Under section 4 of the Bombay Entertain ments Duty Act, 1923, the theatre owners collect the tax as agents of Government. In that capacity, they can be construed as statutory agents. Under section 218 of the Indian Contract Act, subject to such deductions the agent is bound to pay to his principal all sums received on his account. It is clear from this provision that, even if an agent received money on his principal(s behalf under an illegal or void contract, the agent must account to the principal for money so received and cannot set up the illegality of the contract as a justification for withholding payment, which illegality the other contracting pary had waived by paying the money. Upon this principle it has been held that an agent receiving cesses from tenants which are illegal under the Bengal Tenancy Act or moneys due to the principal under a wagering contract is bound under the provisions of this section to pay the same to the principal (see Mulla's Contract Act, pages 584-85). It follows therefore .hat the theatre owners were bound to pay the duty to Government notwithstanding the fact that the recovery was not lawful. In such cases, the agents being bound to pay the amount to Government, it w ould not

SVV
30.5.56.
4 c.

be open to the agents to claim back the amount on the ground that the recovery itself was illegal for the recovery by the agent means the recovery by the principal himself. As said above, it would be open to the persons from whom such unlawful recovery is made to claim refund but not the theatre owners.

Sd./- P.M.L.
19/9
Remembrancer of Legal Affairs.

U.R. to R.D. No. 10618; dated the 20th September 1949.

SVV
31.8.56.
4 c.

SVV 7/6

RNS 7/6